

# Order

**Michigan Supreme Court  
Lansing, Michigan**

November 26, 2014

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-18

Michael F. Cavanagh  
Stephen J. Markman

Amendments of Rule 3.210 and  
Rule 3.215 of the Michigan  
Court Rules, Adoption of New  
Rule 2.407 of the Michigan  
Court Rules

Mary Beth Kelly  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano,  
Justices

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing that was held September 25, 2013, and consideration having been given to the comments received, the following amendments of MCR 3.210 and MCR 3.215 are adopted along with the Court's adoption of new MCR 2.407, effective January 1, 2015.

[The present language is amended as indicated below by underlining  
for new text and strikeover for text that has been deleted.]

## Rule 3.210 Hearings and Trials

### (A) In General.

(1)-(3) [Unchanged.]

(4) Testimony must be taken in person, except that the court may allow testimony to be taken by telephone ~~or other electronically reliable means~~, in extraordinary circumstances, or under MCR 2.407.

(B)-(D) [Unchanged.]

## Rule 3.215 Domestic Relations Referees

(A)-(C) [Unchanged.]

### (D) Conduct of Referee Hearings

(1)-(2) [Unchanged.]

- (3) Testimony must be taken in person, except that, ~~for good cause,~~ a referee may allow testimony to be taken by telephone for good cause, or under MCR 2.407. ~~or other electronically reliable means.~~

- (4) [Unchanged.]

(E)-(G) [Unchanged.]

[Because MCR 2.407 is a new rule, there is no underlined text.]

#### Rule 2.407 Videoconferencing

##### (A) Definitions. In this subchapter:

- (1) “Participants” include, but are not limited to, parties, counsel, and subpoenaed witnesses, but do not include the general public.
- (2) “Videoconferencing” means the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers.

##### (B) Application.

- (1) Subject to standards published by the State Court Administrative Office and the criteria set forth in subsection (C), a court may, at the request of any participant, or sua sponte, allow the use of videoconferencing technology by any participant in any court-scheduled civil proceeding.
- (2) Subject to State Court Administrative Office standards, courts may determine the manner and extent of the use of videoconferencing technology.
- (3) This rule does not supersede a participant’s ability to participate by telephonic means under MCR 2.402.

##### (C) Criteria for Videoconferencing. In determining in a particular case whether to permit the use of videoconferencing technology and the manner of proceeding with videoconferencing, the court shall consider the following factors:

- (1) The capabilities of the court’s videoconferencing equipment.

- (2) Whether any undue prejudice would result.
- (3) The convenience of the parties and the proposed witness, and the cost of producing the witness in person in relation to the importance of the offered testimony.
- (4) Whether the procedure would allow for full and effective cross-examination, especially when the cross-examination would involve documents or other exhibits.
- (5) Whether the dignity, solemnity, and decorum of the courtroom would tend to impress upon the witness the duty to testify truthfully.
- (6) Whether a physical liberty or other fundamental interest is at stake in the proceeding.
- (7) Whether the court is satisfied that it can sufficiently control the proceedings at the remote location so as to effectively extend the courtroom to the remote location.
- (8) Whether the use of videoconferencing technology presents the person at a remote location in a diminished or distorted sense that negatively reflects upon the individual at the remote location to persons present in the courtroom.
- (9) Whether the use of videoconferencing technology diminishes or detracts from the dignity, solemnity, and formality of the proceeding and undermines the integrity, fairness, or effectiveness of the proceeding.
- (10) Whether the person appearing by videoconferencing technology presents a significant security risk to transport and be present physically in the courtroom.
- (11) Whether the parties or witness(es) have waived personal appearance or stipulated to videoconferencing.
- (12) The proximity of the videoconferencing request date to the proposed appearance date.
- (13) Any other factors that the court may determine to be relevant.

(D) Request for videoconferencing.

- (1) A participant who requests the use of videoconferencing technology shall ensure that the equipment available at the remote location meets the technical and operational standards established by the State Court Administrative Office.
  - (2) A participant who requests the use of videoconferencing technology must provide the court with the videoconference dialing information and the participant's contact information in advance of the court date when videoconferencing technology will be used.
  - (3) There is no motion fee for requests submitted under this rule.
- (E) Objections. The court shall rule on an objection to the use of videoconferencing under the factors set forth under subsection C.
- (F) Mechanics of Videoconferencing. The use of any videoconferencing technology must be conducted in accordance with standards published by the State Court Administrative Office. All proceedings at which videoconferencing technology is used must be recorded verbatim by the court with the exception of hearings that are not required to be recorded by law.

*Staff Comment:* The new court rule allows courts to use videoconferencing in civil court proceedings (including domestic relations proceedings) upon request of a participant or sua sponte by the court, subject to specified criteria and standards published by the State Court Administrative Office (SCAO). Amendments of MCR 3.210 and MCR 3.215 provide cross references to the new court rule. Adoption of MCR 2.407 does not affect MCR 3.904, MCR 5.738a, and MCR 6.006. In addition, as relevant to the rule amendments in this order, Administrative Order No. 2014-25, also issued today, requires SCAO to adopt videoconferencing standards, and requires courts to comply with those standards.

The staff comment is not an authoritative construction by the Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 26, 2014

Clerk